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C O N F I D E N T I A L SECTION 01 OF 04 COLOMBO 000742

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DEPARTMENT FOR SCA/INS  
MCC FOR D NASSIRY AND E BURKE

E.O. 12958: DECL: 05/15/2017  
TAGS: [PGOV](#) [PREL](#) [PTER](#) [PHUM](#) [MOPS](#) [CE](#)  
SUBJECT: SRI LANKA: SECOND "EMINENT PERSONS" PLENARY  
HIGHLIGHTS CHALLENGES; MAKES SOME PROGRESS

REF: A. COLOMBO 563  
[1](#)B. COLOMBO 525  
[1](#)C. COLOMBO 511  
[1](#)D. COLOMBO 402  
[1](#)E. COLOMBO 290 AND PREVIOUS

Classified By: Ambassador Robert O. Blake, Jr., for reasons 1.4(b,d).

[1](#)1. (C) SUMMARY: The second plenary meeting of the International Independent Group of Eminent Persons (IIGEP) and the Commission of Inquiry (CoI) took place May 12. This was followed the same week by the CoI's first hearing, a meeting hosted by the Human Rights Minister to update donor countries on the CoI's progress, and a one-day retreat on witness protection organized by the local representative of the UN High Commissioner for Human Rights (UNOHCHR). The week's events highlighted several challenges, including the Attorney General's problematic role in the CoI and the lack of immunity for IIGEP "assistants," but also revealed some progress on witness protection and the dynamics between the IIGEP and CoI. The upcoming quarterly report to the President and IIGEP's first press release on the CoI's progress will provide opportunities to gauge the Government of Sri Lanka's (GSL) commitment to making the CoI work. US Eminent Person (EP) Gene Dewey acknowledged to us that the CoI is unlikely to achieve its full mandate, but argued that progress on a couple of cases was feasible and would set a precedent of punishing human rights abuses. He also endorsed the gradual establishment of international human rights monitoring, possibly by strengthening the UNOHCHR presence in Sri Lanka. End Summary.

GSL Defends Role of the Attorney General

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[1](#)2. (C) At a meeting on May 14 hosted by Minister of Disaster Management and Human Rights Mahinda Samarasinghe, the GSL argued that the Attorney General's (AG) involvement in the CoI (the CoI's Panel of Counsel is made up entirely of AG staff) is appropriate under Sri Lankan law. The AG office

explained that the AG is independent under Sri Lankan law and AG involvement in investigating the Government for human rights offenses poses no conflict of interest. Nonetheless, they said, since the IIGEP was concerned, the CoI has undertaken to set up an "unofficial" panel of counsel to assist as well. U.S. EP Gene Dewey, in his capacity as acting Chairman of the IIGEP, pointed out to the GSL that the AG's involvement in the CoI is unacceptable by international standards, regardless of its legality under Sri Lankan law. He stressed that the CoI's actions must meet international norms and there must be no perception of conflict of interest. This has been an ongoing issue of debate between the IIGEP and the CoI since the initial IIGEP plenary in February.

#### Initial Hearing A "Farce"

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13. (C) The much anticipated first hearing of the CoI failed to meet expectations. The hearing was not open to the public and was not a presentation of evidence by witnesses. On May 8, just days before the hearing, the GSL revised the CoI's warrant giving it authority to conduct its own investigations until the actual Investigation Unit is operational. The CoI used this clause to conduct interviews of police involved in the investigation of the murder of the 17 Action Against Hunger workers in Muttur. All of the questioning, however, was conducted by Deputy Solicitor General Yasantha Kodagoda, the head of the CoI's Panel of Counsel. The Commissioners themselves, with the exception of one, did not participate in the questioning. IIGEP members also were not given the opportunity to question the police officers. Dewey reported

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to us that Kodagoda's line of questioning was leading and that it was obvious that he was trying to finger the local Muslim "Home Guard" as the perpetrators.

#### GSL Offers UN Immunity for Assistants

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14. (C) The Ministry of Foreign Affairs on May 14 informed the IIGEP "assistants" that they will be accorded privileges and immunities under Article IV of the Convention on the Privileges and Immunity of the United Nations. The IIGEP assistants have said that this is unacceptable because it provides immunity to the Assistants only during working hours. They worry that this leaves them open to retaliation by law enforcement and security officials and plan to provide a written response to the GSL outlining their concerns.

#### Baby Steps on Witness Protection

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15. (C) Deputy Inspector General of Police Thangavelu has been appointed as head of the CoI's Victim Witness Protection Unit (VWPU). A deputy has also been assigned, but there are no other members so far. In the May 14 meeting with Samarasinghe, Kodagoda said the GSL is looking for ways to fast track pending witness protection legislation to provide a legal backbone for the VWPU's work. The GSL says it needs to bring in international witness protection experts, in addition to the IIGEP Assistants with expertise in this area, to help set up its VWPU.

16. (C) On May 17, the local UNOHCHR office held its first one-day witness protection workshop. The seminar was surprisingly successful, according to IIGEP. Several presentations were made on witness protection law. U.S.-funded IIGEP Assistant David Savage spoke about international standards in witness protection legislation. Savage said the police and the Commissioners appreciated the briefing and seemed to understand the critical need for witness protection legislation. One significant outcome of the retreat is a working committee on witness protection to identify short-term witness protection measures that can be

implemented until the legislation is complete and the VWPU is fully staffed. The Committee will consist of some of the Commissioners, the head of the VWPU, a few NGOs, and Savage. Once the short-term measures are addressed, the committee will look at ways to ensure the longevity of the VWPU after the CoI's mandate expires. The Committee will hold its first meeting on May 23. A follow on seminar will be held after the Committee has had some time to operate.

¶7. (C) In Savage's view, low level witness protection is feasible in Sri Lanka, including hiding the identity of some witnesses. Those whose identity cannot be concealed, because of the nature of the information they reveal, will need to be relocated outside of Sri Lanka. He said Germany, Netherlands, and Australia have indicated willingness to accept 4 or 5 witnesses each. The amount of protection that will be required for families of witnesses is still under discussion.

¶8. (C) Savage also told us that several witnesses have been identified that have already taken refuge outside Sri Lanka. The CoI has indicated that these witnesses may be unwilling to talk to the Commissioners, and has asked that IIGEP members travel to meet them and take their testimonies. According to Savage, the EPs seem willing to do this and a travel budget for that purpose already exists. Post will forward septel information obtained from a witness in the United Kingdom on the killing of five youths in Trincomalee.

Improving Relations Between IIGEP and CoI

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¶9. (C) Dewey reported that the tone of last week's plenary meeting was markedly different from the one in February. The Commissioners were much more open to help from the IIGEP. They even suggested the IIGEP not wait for the CoI to ask for help, pointing out that they did not necessarily know what to ask for. The Commissioners encouraged the IIGEP to send a letter to the GSL rebutting the GSL stance on the AG's role in the CoI and arguing that the CoI should have an independent budget. The CoI has rightly pointed out that since the GSL, which provides funding for the CoI, has mandated that all CoI expenditures be approved by the Presidential Secretariat, its independence is limited.

Upcoming Quarterly Report and Press Release  
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¶10. (C) The first IIGEP quarterly report is due to the President on June 1. This document will not be made public. However, IIGEP plans to issue a press release, probably on June 4, to bring public attention to some of the same issues covered in the report. IIGEP hopes the press release will provide important information for the international community to consider at the next UN Human Rights Council (UNHRC) session starting June 11. Savage noted that the current draft is strongly worded and that IIGEP expects the GSL's reaction to be a revealing indicator of Government intentions.

Adjusting Expectations  
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¶11. (C) Dewey acknowledged to us that the CoI is unlikely to achieve its mandate of investigating 15 cases within its current timetable. However, he argued that there is some chance that it can resolve at least one or two. This might be enough to establish a precedent of punishing human rights offenders, which could act as a deterrent to future violations. The process of pushing forward on a couple of cases will provide the opportunity to engage in capacity building, particularly in the area of witness protection. In his view, it is also critical to begin to establish an international monitoring presence. Since the GSL is sensitive to the notion of "monitors," he suggests slowly

building up the UNOHCHR presence in Sri Lanka to provide the public with a safe place to go with information on abuses.

Dewey to Attend UN HRC Session

¶12. (C) The IIGEP Chairman, Justice Bhagwati, has asked U.S. EP Gene Dewey to attend the 5th session of the UNHRC on June 11-14 in his place. Savage told us that Dewey is interested in attending and has asked that Savage accompany him. According to Savage, a key task for Dewey in Geneva will be to prepare UN Commissioner for Human Rights Louise Arbour for her meeting with President Rajapaksa on June 15. The trip to Geneva would be funded by the International Commission of Jurists, which invited Justice Bhagwati to attend.

¶13. (C) COMMENT: The problem of the Attorney General's interference in the operation of the CoI is not hypothetical. The AG's office has never initiated a prosecution against anyone in the Government. The President directly appointed the AG, like many other key Commissioners and government officials, by circumventing Article 17, one of the key checks and balances in the Sri Lankan Constitution. AG C.R. De Silva and Deputy Solicitor General Kodagoda are considered proteges of the Chief Justice of the Supreme Court, who holds extreme views on the conflict. Kodagoda's role in the CoI appears aimed at tightly controlling the process to ensure

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that nothing reflects negatively on the GSL. The IIGEP press release in early June, if it is a strong statement, will indeed test the GSL commitment to resolving its human rights problems. On the other hand, the successful witness protection retreat and the CoI's invitation for EPs to interview witnesses outside Sri Lanka are promising developments.

BLAKE